

Special Session

Agenda Item #	3
Meeting Date	December 5, 2005
Prepared By	Wayne Hobbs
Approved By	Barbara B. Matthews City Manager

Discussion Item	National Capital Region Mutual Aid Agreement.
Background	<p>At its meeting on November 9, 2005, the COG Board of Directors endorsed a National Capital Region Mutual Aid Agreement, culminating a several-year process to legitimate and authorize intrastate and interstate mutual aid during periods of need due to natural or manmade emergency and the day-to-day mutual public safety support.</p> <p>This Agreement has been drafted by the COG Attorneys Committee and has been coordinated and reviewed by the Attorneys General of Maryland and Virginia to implement the mutual aid provisions of the Intelligence Reform and Terrorism Protection Act of 2004 (the 9/11 Commission Act). These statutory provisions reflected the combined effort of attorneys for the COG jurisdictions, the Attorney Generals and Governors of Maryland and Virginia, the Administration (DOJ, DHS, OMB, and the Secret Service), and Congress. The COG Board, the NCR-EPC, and the CAO's were kept apprised of each step of this process and the substantive protections offered the region.</p> <p>The Board requests that each member jurisdiction review this Agreement and authorize the appropriate official to execute it. Additionally, each jurisdiction should further authorize appropriate administrative officials to negotiate and execute specific Operational Plans for each emergency response function (e.g., police, fire, public works, etc.), to govern the specific process by which mutual aid is requested and provided.</p> <p>The COG Board hopes to have regional consensus and execution by the first of the year.</p> <p>Due to the short turn around time requested by COG, the Emergency Preparedness Committee has not reviewed this agreement.</p>
Policy	Mutual Aid in emergency situations is desirable and necessary.
Fiscal Impact	None at this time.
Attachments	<ul style="list-style-type: none"> 1) Proposed Agreement 2) COG Board Resolution 3) FAQ's – National Capital Region Mutual Aid 4) Next Steps (outlining the implementation process) 5) Proposed Council Resolution
Recommendation	That Council approve the attached resolution authorizing the City Manager to execute the National Capital Region Mutual Aid Agreement and authorizing the City Manager and her designees to negotiate and execute operational plans to govern the procedures by which mutual aid is requested and provided.

**RESOLUTION 2005 -
AUTHORIZING THE CITY MANAGER TO EXECUTE
THE NATIONAL CAPITAL REGION MUTUAL AID AGREEMENT**

WHEREAS, the COG Board of Directors has endorsed a National Capital Region Mutual Aid Agreement; **AND**

WHEREAS, the COG Board has requested that member jurisdictions review and execute this agreement; **AND**

WHEREAS, it is in the best interest of the City of Takoma Park, Maryland and its residents to participate in a regional mutual aid agreement for natural disasters, incidents of terrorism, major public events, and the day-to-day needs of providing efficient and expeditious public safety services for its residents; **AND**

WHEREAS, the COG Attorneys Committee, working in conjunction with attorneys representing the Department of Homeland Security and the Attorneys General of Maryland and Virginia, has completed a proposed Mutual Aid Agreement for the National Capital Region which implements and utilizes the authority and protections conferred on the region by Congress as Section 7302 of the Intelligence Reform and Terrorism Protection Act of 2004.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT the City Manager is authorized to sign and execute the National Capital Region Mutual Aid Agreement; **AND**

BE IT FURTHER RESOLVED THAT the City Manager or her designees are authorized to negotiate and execute specific Operational Plans to govern the procedures by which mutual aid is requested and provided.

Adopted this _____ day of _____, 2005.

FAQ's – National Capital Region Mutual Aid

1. **Don't we already have mutual aid agreements? Why do we need new ones?** The region has had some form of mutual aid agreements (both intrastate and interstate) since the late 50's. Probably there was informal mutual aid before that. Legally, local governments need legal authority (statute, agreement, or both) to operate outside of their boundaries. We have had no new interstate mutual aid agreements (or amendments to such existing agreements) since the 80's when a federal appeals court held that sovereign immunity of jurisdictions and their employees did not cross state boundaries when they came to the aid of foreign governments. Maryland and particularly Virginia Attorneys General, as well as local government attorneys believe they cannot enter into agreements which could "waive" their sovereign immunity and subject their jurisdictions and employees to liability in foreign courts. New agreements are necessary to address changes in public services and responsibilities, particularly since 9/11. In many instances we have no current mutual aid authority.
2. **Why have we been so long without the ability to create new or amend old mutual aid agreements? Why is it different now?** State tort laws, particularly concerning matters of sovereign immunity, tort claims acts, and standards of liability vary among Maryland, Virginia, and DC. State attorneys general and state legislatures have largely been unwilling to modify their respective public policies to accommodate the need for identical tort laws for mutual aid. After 9/11, the need for mutual aid was more acutely perceived – at the federal level as well. Given the need to protect the federal interests by mutually assisting first responders, we were able to convince the Administration and the Congress that the problem could be solved by federal legislation. The COG attorneys committee, together with representatives of the State attorneys general, the governors, and DHS worked for over two years to fashion a proposed federal statute addressing our concerns, lobby the Justice Department, OMB, Secret Service and others to support it, and ultimately submit it for Congressional consideration. Our proposed legislation was adopted as part of the recommendations of the 9/11 Commission, the Intelligence Reform and Terrorism Protection Act of 2004.
3. **What is this new Agreement?** The Agreement that we've circulated is the proposal of the COG attorneys committee to implement the new statute or regional mutual aid. It has been reviewed by the Maryland and Virginia Attorneys General who interpose no objection to local governments' execution or use. It is intended that this Agreement support all mutual aid generally provided between and among units of local government, including, but not limited to police fire, emergency management, public health, public works, and the like. As we proceed we may find that some services or functions may require separate

agreements. However, the mutual aid principles contained in this draft will apply to any other agreement which follows.

- 4. Who are the parties to the Agreement?** The Agreement is open to any of the COG member jurisdictions which provide the specific services of the Agreement -- presumably, therefore, any city or county which provides police or fire service or both. (To the extent that other services are brought within this Agreement, or are made the subject of future agreements, parties may be added) The States are invited to be parties, since the both provide and require many of the services contemplated by the Agreement. However, execution by the States is not required to authorize interlocal mutual aid under this Agreement.
- 5. What kinds of emergencies can trigger mutual aid under this Agreement?** Emergencies may be natural events – hurricanes, tornados, pandemics, etc. They may be human caused events – either terrorist or accidental. A Presidential declaration of emergency covering any or all of the NCR is such a trigger. Such a declaration may be made by the President, himself, or may be delegated to another federal official. The Agreement refers to this as an “emergency.” Another trigger is a “state of emergency” declared by the Governor of Maryland or Virginia or the Mayor of the District of Columbia. Under varying state laws, such declarations may be delegated to other state personnel. The phrase “state of emergency” is used to conform to the language of the National Response Plan and to semantically distinguish it from an action of the President, even though the underlying event may be identical. Declarations by the President or a Governor can trigger specific federal or state law supporting or defining legal authorities of response, e.g., FEMA, EMAC. The “authorized official” of a local government party can also declare a “state of emergency.” Although this declaration will not, by itself, trigger federal or state law, it will authorize mutual aid under this Agreement. “Authorized official” is presumed to be the chief elected official of the jurisdiction, unless some other official is designated by the jurisdiction or the authority is delegated. Emergencies and states of emergency will almost always be specific, discrete events, not recurring conduct.
- 6. What is a “public service event?”** Local governments have mutual aid needs for events or activities which do not fall within the definitions of emergency or states of emergency. These can be “one-shot” events or those which only occur occasionally. The Million Man March, Fourth of July celebrations, inaugurations, large political demonstrations are examples of such events. Some public service events represent ongoing or recurrent conduct or activities. Examples of these include second due (or even first due) fire or EMS response across political boundaries. Although there may not be a multiple alarm conflagration or more than a single need for medical attention or transport, these services are provided

regularly – daily – between and among jurisdictions. This Agreement acknowledges that both kinds of public service events can serve as the basis for mutual aid assistance. Once the concept of a public service event is agreed upon and requested (e.g., second due fire response), jurisdictions will be able to designate specific employees to request specific response (e.g., 911 operators).

7. **Why is training part of the Agreement?** Many jurisdictions already share training functions at regional locations. This Agreement acknowledges that such training or regional exercises will be authorized and covered by the protections of the Act and the Agreement.
8. **What are operational plans?** Operational or operations plans set forth the specific protocol used in requesting mutual aid or in responding to such a request. They may answer such questions as: Who makes the request? What format or media is used in making the request? What records are kept of both the request and the response? How to establish how many employees or what equipment or resources will be requested or provided? Specifics of any communications protocols? Identification of incident commanders? Several existing mutual aid services already have operations manuals. These will have to be reviewed, updated if required, and conformed to the new Agreement. Operations plans do not have the formality of mutual aid agreements, themselves. They are and will be capable of ready amendment or modification by the jurisdictions' administrators or professionals.
9. **Will our jurisdictions or their employees be liable for any injuries they cause?** This question was the primary sticking point for acceptance of mutual aid agreements over the last two decades. Given the complexity and the risks inherent in mutual aid and first response, it is entirely likely that innocent third parties may be injured. The rules are now clear. A jurisdiction and its employees rendering aid under this Agreement in another state (or DC) can only be sued in its own state and under the laws and principles applicable in its own state. Therefore, if a defense exists (e.g., sovereign immunity) in your own state, you can rely on it when you provide mutual aid under this Agreement in a different state. Or, if your conduct is being tested against your training or certification, it will be the training or certification of your own state that will govern. Even if you are sued in federal court, it will be in a federal court in your own state. In addition to the legal principles involved, you will not be hauled into the courts of a foreign jurisdiction, perhaps farther away.
10. **What's this stuff about joint liability?** This is lawyer talk. It means that is two or more different jurisdictions are accused of causing the same injury (e.g., a Prince William police officer directs a Montgomery fire truck over a pedestrian while responding to a DC emergency), lawyers for Prince William and

Montgomery will cooperate in the defense and will negotiate in good faith for issues concerning any judgment or settlement.

11. **Can we be reimbursed for our expenses?** The parties have agreed to each bear their own expenses. Therefore, I'll pay my own employees and pay for the ruined axle on my own fire truck, even though these expenses were incurred in giving you mutual aid. The exception is in the case of a presidentially declared emergency, we have agreed to reimburse each other for expenses. This provision is required to seek federal reimbursement from FEMA.
12. **What about workers compensation and other employee protections?** All employee benefits (overtime, comptime, workers comp, unemployment comp, disability, pension, death benefits, etc.) apply as if the work was performed and the liability incurred in an employee's home jurisdiction.
13. **Who directs the efforts if there are responders from other jurisdictions?** Generally speaking, the incident commander will be the ranking onsite official of the jurisdiction requesting aid. This is in concert with the National Incident Management System. Specifics for each type of assistance will be spelled out in the appropriate operations plan.
14. **Can additional parties join this Agreement and receive its protections?** Yes, other local governments can join if they share a boundary with the COG footprint (counties) or are within a county which is a signatory party. Provisions are also made for state and federal agencies to join, as well as the Metropolitan Washington Airports Authority and the Washington Metropolitan Area Transit Authority.
15. **What about private parties?** Hospitals? Truckers? Utilities? Humane Societies? Not a part of this Agreement. Parties like these will be treated separately.

National Capital Region Mutual Aid Agreement

THIS AGREEMENT, made and entered into this ____ day of November, 2005, between and among the District of Columbia, the State of Maryland, the Commonwealth of Virginia, and certain local governments of the National Capital Region, that are participating jurisdictions of the Metropolitan Washington Council of Governments (COG), and have evidenced agreement by execution hereto,

WITNESSETH:

WHEREAS, Federal, State, and local governments in the National Capital region have determined that provision of public safety and other emergency services across jurisdictional boundaries, both intrastate and interstate, will increase their ability to preserve the safety and welfare of the entire Region; and

WHEREAS, legislation in Maryland and Virginia authorizes their respective local governments to establish and carry into effect mutual aid agreements and plans on an intrastate basis, and legislation in Maryland, Virginia, and the District of Columbia authorizes the local governments to establish and carry into effect mutual aid agreements on an interstate basis; and

WHEREAS, federal legislation (Intelligence Reform and Terrorism Protection Act of 2004, Pub. L. 108-458, Section 7302, 118 Stat. 3638, 3840) acknowledges the need for intrastate and interstate mutual aid in the National Capital Region, between and among local governments, state governments, and federal agencies and activities, to protect the federal interest as well as that of the state and local governments and their constituents, and specifically authorizes the establishment and implementation of such interstate and intergovernmental mutual aid agreements and plans, and sets forth therein certain legal procedures, authorities, and limitations governing parties to such mutual aid agreements when assistance is provided thereunder, whether in response to a declared emergency, a single or recurrent need for assistance in response to a public event or events, or training or practice to enable or support such assistance.

NOW, THEREFORE, the undersigned parties do agree as follows:

1. Adoption

This Agreement is adopted pursuant to and implements provisions of the Intelligence Reform and Terrorism Protection Act of 2004, Pub. L. 108-458, Section 7302, 118 Stat. 3638, 3840. Definitions and concepts contained therein are incorporated into this Agreement by reference.

2. Emergency

An emergency may be declared by the President of the United States or authorized representative of the federal government. A state of emergency may be declared by the Governor of Maryland or Virginia or the Mayor of the District of Columbia, or such person delegated such authority pursuant to the respective laws of Maryland, Virginia, or the District of Columbia, or may be declared by the authorized official of any other signatory jurisdiction hereto. When an emergency or state of emergency exists within the boundaries of any of the parties hereto, as the result of, or due to the imminence of fire, flood, epidemic, war, internal disorder, act of terrorism, or other natural or human-caused disaster, the party or parties initially impacted shall notify other appropriate party or parties to this Agreement of such emergency or state of emergency and, if necessary or desirable its need for assistance. Assistance shall be rendered according to the procedures established in one or more operational plans developed and agreed to by the parties to this Agreement pursuant to the provisions of Paragraph 5, herein. Each party shall designate the appropriate official or officials within its jurisdiction who are empowered to request assistance, and agree to provide assistance, under this Agreement.

3. Public Service Event

A public service event may be certified by any of the authorized persons referenced in Paragraph 2 herein. A public service event may be a one-time, discrete event, not reaching the nature or criteria requiring the declaration of an emergency or state of emergency, but still requiring inter-jurisdictional support and assistance. The activities or situations giving rise to public service events often are known in advance, affording the parties the ability to specifically plan for inter-jurisdictional mutual aid to be requested and afforded. Public service events may also be recurrent activities, where the provision of inter-jurisdictional assistance expedites the response to a particular need or fills in temporary gaps in the service of the requesting jurisdiction. Once the nature and general definition of such recurrent public service events is certified by an authorized person, the actual request for response may be made in the normal course of activity by delegated subordinates. Assistance shall be rendered according to the procedures established in one or more operational plans developed and agreed to by the parties to this Agreement pursuant to the provisions of Paragraph 5, herein. Each party shall designate the appropriate official or officials within its jurisdiction who are empowered to request assistance under this Agreement.

4. Training

From time to time the parties to this Agreement, or any subset thereof, may engage in training exercises to better prepare for inter-jurisdictional and mutual assistance contemplated by this Agreement and the operational plans developed hereunder, including exercises, testing, and other activities using equipment and personnel to simulate performance of any aspect of giving or receiving aid. Parties may participate in such training exercises, and may cross jurisdictional boundaries in so doing, under the authorizations and protections of this Agreement. Formal description and creation of such training may be provided in one or more operational plans developed and agreed to by the parties to this Agreement pursuant to the provisions of Paragraph 5, herein, or may be addressed in other formal agreements between and among the parties. Each party shall designate the official or officials authorized to commit the party and its employees to training or exercises.

5. Operational Plans

The mutual aid and training provided for under this Agreement shall be available upon the development and approval by the parties hereto of one or more operational plans. Any such plan shall outline the procedure to be followed in responding to a request for mutual aid and to participate in training or exercises. Upon execution of this Agreement, each party hereto shall designate one or more persons to participate in the development of one or more regional operational plans. Execution of any such operational plan by two or more parties to this Agreement shall be sufficient to trigger actions between or among such executing parties under the authorizations and protections of this Agreement. The parties executing any such operational plan will meet annually to review and, if necessary, to propose amendments thereto. Any other party to this Agreement may participate in such operational plan reviews. Any amendment proposed to any such operational plan will not be effective until approved in writing by all the executing parties thereto.

6. Liability to Third Parties

The services performed pursuant to this Agreement shall be deemed for public and governmental purposes and all immunities from liability enjoyed by the local government, its officials and its employees within its boundaries shall extend to its participation in providing mutual aid and engaging in training and exercises inside and outside its boundaries. Litigation asserting liability hereunder must comport with the provisions Section 7302(d) of the Intelligence Reform and Terrorism Prevention Act of 2004. Nothing herein shall abrogate any immunity which may exist by statute or at common law. Where litigation asserting liability hereunder alleges joint liability among parties hereto from different states, the parties will meet to discuss and cooperate in the defense or settlement of such litigation.

7. Waiver; Reimbursement

Unless otherwise agreed in writing, each party hereto waives any and all claims against all the other parties hereto that may arise out of its activities outside its respective jurisdictions while rendering mutual aid or engaging in training under this Agreement, except that, in the case of a Presidentially declared emergency or major disaster a party may seek reimbursement for its expenses from the party requesting the aid.

8. Employment Benefits

All pension, relief, disability, death benefits, workers compensation and other benefits enjoyed by the employees of parties rendering assistance shall extend to the services they perform under this Agreement outside their respective jurisdictions as if those services had been rendered in their own jurisdiction.

9. Direction of Assistance

Insofar as reasonable and appropriate the Operational Plans referenced in Paragraph 5 herein will comport with the National Incident Management System. Parties responding outside of their jurisdictions, and their employees actually providing the assistance, will be under the general control and direction of the appropriate official designated by the jurisdiction requesting aid.

10. Additional Parties

The initial parties hereto agree and concur to the addition of additional parties to this Agreement including: the Metropolitan Washington Airports Authority, the Washington Metropolitan Area Transit Authority, those local governments within the outer boundaries of those jurisdictions comprising the Metropolitan Washington Council of Governments, or are local governments adjacent to any existing party to this Agreement, and discrete agencies or entities of the Federal Government, the State of Maryland, and the Commonwealth of Virginia, with facilities within the outer boundaries of the parties to this Agreement.

11. Disputes

Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation to the disagreement to respective higher officials for appropriate resolution.

12. Duration

This Agreement shall become effective upon execution by at least one party from both the State of Maryland and the Commonwealth of Virginia or one party from one of these states and the District of Columbia. It shall remain in effect until terminated by all but one the parties executing this Agreement, upon written notice setting forth the date of such termination. Withdrawal by a party hereto shall be made by thirty days written notice to all other parties and the Metropolitan Washington Council of Governments; such notice shall not terminate the Agreement among the remaining parties.

13. Execution

This Agreement and any amendments thereto may be executed in duplicate originals and filed with the Washington Metropolitan Council of Governments.

IN WITNESS WHEREOF, the parties have executed this Agreement and, by so doing, certify that the respective officials executing this Agreement on their behalf have been duly authorized to enter into this National Capital Region Public Safety Mutual Aid Agreement.

City of Alexandria

By: _____

Date: _____

County of Arlington

By: _____

Date: _____

City of Bowie

By: _____

Date: _____

City of College Park

By: _____

Date: _____

District of Columbia

By: _____

Date: _____

City of Fairfax

By: _____

Date: _____

County of Fairfax

By: _____

Date: _____

City of Falls Church

By: _____

Date: _____

County of Frederick

By: _____

Date: _____

City of Gaithersburg

By: _____

Date: _____

City of Greenbelt

By: _____

Date: _____

County of Loudoun

By: _____

Date: _____

City of Manassas

By: _____

Date: _____

City of Manassas Park

By: _____

Date: _____

County of Montgomery

By: _____

Date: _____

County of Prince George's

By: _____

Date: _____

County of Prince William

By: _____

Date: _____

City of Rockville

By: _____

Date: _____

City of Takoma Park

By: _____

Date: _____

Additional Parties:

State of Maryland

By: _____

Date: _____

Commonwealth of Virginia:

By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

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By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

RESOLUTION SUPPORTING EXECUTION OF A NATIONAL CAPITAL REGION MUTUAL AID AGREEMENT

WHEREAS, the Metropolitan Washington Council of Governments (COG) has long espoused mutual aid agreements which would address the region's ability to give mutual support in times of terrorism, natural emergency, and major public events, as well as day-to-day assistance in providing efficient and expeditious public safety services; and

WHEREAS, COG has supported Federal legislation which would ameliorate concerns over third-party liability and reimbursement which have been roadblocks to updating or originating regional mutual aid agreements; and

WHEREAS, Congress has recently addressed these concerns for the National Capital Region as Section 7302 of the Intelligence Reform and Terrorism Protection Act of 2004; and

WHEREAS, the COG Attorneys Committee, working in conjunction with attorneys representing the Department of Homeland Security and the Attorneys General of Maryland and Virginia, has completed a proposed Mutual Aid Agreement for the National Capital Region which implements and utilizes the authority and protections conferred on the region by Congress as Section 7302 of the Intelligence Reform and Terrorism Protection Act of 2004.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

1. That COG supports and endorses broad based mutual aid for natural disasters, incidents of terrorism, major public events, and the day-to-day needs of providing efficient and expeditious public safety services to the residents of the National Capital Region.
2. That COG requests that the jurisdictions of this Region review and consider the National Capital Region Mutual Aid Agreement, authorize its execution, and commence activities thereunder as soon as possible.